

[First Reprint]

SENATE, No. 817

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JANUARY 24, 2002

Sponsored by:

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Assemblyman KEVIN J. O'TOOLE

District 40 (Bergen, Essex and Passaic)

Assemblyman PETER J. BARNES, JR.

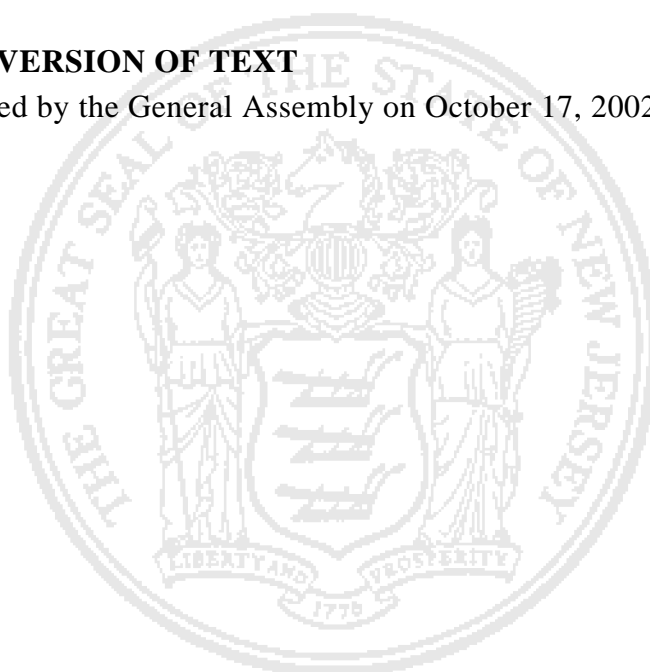
District 18 (Middlesex)

SYNOPSIS

Requires proceeds from sale of criminal memorabilia be deposited into escrow account for victims.

CURRENT VERSION OF TEXT

As amended by the General Assembly on October 17, 2002.



(Sponsorship Updated As Of: 10/18/2002)

1 AN ACT concerning certain profits related to crime ¹[and amending],
2 supplementing Title 52 of the Revised Statutes and repealing¹
3 P.L.1983, c.33.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ¹[1. Section 2 of P.L.1983, c.33 (C.52:4B-27) is amended to read
9 as follows:

10 2. As used in this act:

11 a. "Victim" means any person who suffers personal injury or death
12 or incurs loss of or injury to personal or real property as a result of the
13 crime;

14 b. "Victim's representative" means one who represents or stands
15 in the place of a victim, including but not limited to a spouse, parent,
16 relative, guardian, dependent, heir, or executor;

17 c. "Profiteer of a crime" or "profiteer" means any person who sells
18 or transfers for profit any memorabilia or other property or item of a
19 person convicted or accused of a crime in this State, the value of
20 which is enhanced by the notoriety gained from the commission of the
21 crime for which the person was convicted or accused.

22 (cf: P.L.1983, c.33, s.2)]¹

23
24 ¹[2. Section 3 of P.L.1983, c.33 (C.52:4B-28) is amended to read
25 as follows:

26 3. Every person, firm, corporation, partnership, association or
27 other legal entity contracting with a person convicted or accused of a
28 crime in this State or an agent, assignee, beneficiary, conservator,
29 executor, guardian, representative, relative, friend, associate or
30 conspirator of a person convicted or accused of a crime in this State,
31 with respect to the reenactment of the crime, by way of a movie, book,
32 magazine article, other literary expression, recording, radio or
33 television presentation, live entertainment or presentation of any
34 kind[, or from the expression of the person's thoughts, feelings,
35 opinions or emotions regarding the crime,] that deals primarily with
36 the crime for which the person was convicted or accused, shall submit
37 a copy of the contract to the board and shall pay over to the board all
38 moneys which would otherwise, by terms of the contract, be owing the
39 person convicted or accused of a crime in this State or an agent,
40 assignee, beneficiary, conservator, executor, guardian, representative,
41 relative, friend, associate or conspirator of a person convicted or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted October 17, 2002.

1 accused of a crime in this State. In the case of a sale or transfer by the
2 profiteer of a crime, the profiteer shall pay over to the board all profits
3 which would be owing to the profiteer. The board shall deposit these
4 moneys in an interest bearing escrow account for the benefit of and
5 payable to any victim of the convicted or accused person or the
6 victim's representative, provided that the person is eventually
7 convicted of the crime and that the victim or victim's representative
8 brings, within five years of the date of the establishment of the escrow
9 account, a civil action for damages resulting from the crime, or has
10 already obtained a judgment for damages resulting from the crime, in
11 a court of competent jurisdiction and files notice of such action with
12 the board and recovers a money judgment for damages resulting from
13 the crime against the person or an agent, assignee, beneficiary,
14 conservator, executor, guardian, representative, relative, friend,
15 associate or conspirator of a person convicted or accused of a crime
16 in this State. In the case of a sale or transfer by a profiteer of a crime
17 and upon adequate demonstration by the profiteer, the court may
18 exclude from the escrow account that portion of the profits that
19 represents the inherent value of the memorabilia, property or item sold
20 or transferred and exclusive of the amount of the enhancement to the
21 value due to the notoriety of the convicted or accused person.

22 (cf: P.L.1983, c.33, s.3)]¹

23
24 ¹1. a. The Legislature finds:

25 (1) The State of New Jersey has a compelling interest in preventing
26 any person who is convicted of a crime from directly or indirectly
27 profiting from the crime or circumstances surrounding the crime.

28 (2) To that end, the State has established the Victims of Crime
29 Compensation Board to help compensate victims of crime for their
30 loss.

31 b. The Legislature declares that it is altogether fitting and proper
32 and within the public interest to provide a mechanism where profits
33 from a crime that are received by a convicted person should be
34 available as restitution to the victim of crime.¹

35
36 ¹2. For the purposes of this act:

37 a. "Crime" means:

38 (1) any crime as defined under the laws of this State; or

39 (2) any offense in any jurisdiction which includes all of the essential
40 elements of any crime as defined under the laws of this State and

41 (a) the crime victim was a resident of this State at the time of the
42 commission of the offense; or

43 (b) the act or acts constituting the offense occurred in whole or in
44 part in this State.

45 b. "Profits from a crime" means:

1 (1) any property obtained through or income generated from the
2 commission of a crime of which the defendant was convicted;

3 (2) any property obtained by or income generated from the sale,
4 conversion or exchange of proceeds of a crime, including any gain
5 realized by such sale, conversion or exchange; and

6 (3) any property which the defendant obtained or income generated
7 as a result of having committed the crime, including any assets
8 obtained through the use of unique knowledge obtained during the
9 commission of, or in preparation for the commission of, a crime, as
10 well as any property obtained by or income generated from the sale,
11 conversion or exchange of such property and any gain realized by such
12 sale, conversion or exchange.

13 c. "Funds of a convicted person" means all funds and property
14 received from any source by a person convicted of a crime, or by the
15 representative of such person, including the convicted person's spouse,
16 children, parents, siblings or such other person whom a court of
17 competent jurisdiction may deem to be the alter ego of the convicted
18 person, giving due regard to the purpose and intent of this act, but
19 excluding child support and earned income, where such person:

20 (1) is an inmate or prisoner serving a sentence under the custody
21 and control of the Department of Corrections and includes funds
22 received on behalf of an inmate or prisoner and deposited in an inmate
23 or prisoner account to the credit of the inmate or prisoner.

24 (2) is not an inmate or prisoner, but who is serving a sentence of
25 probation or conditional discharge or is presently subject to a term of
26 post release supervision, but shall include earned income earned during
27 a period in which such person was not in compliance with the
28 conditions of probation, conditional discharge or post release
29 supervision; or

30 (3) is no longer subject to a sentence of probation, conditional
31 discharge or post release supervision, and where, within the previous
32 three years, the full or maximum term or period terminated or expired
33 or such person was granted a discharge by the State Parole Board
34 pursuant to applicable law, or granted a discharge or termination from
35 probation pursuant to applicable law or granted a discharge or
36 termination under applicable federal or State law, rules or regulations
37 prior to the expiration of such full or maximum term or period; and
38 includes only:

39 (a) those funds paid to such person as a result of any interest, right,
40 right of action, asset, share, claim, recovery or benefit of any kind that
41 the person obtained, or that accrued in favor of such person, prior to
42 the expiration of such sentence, term or period;

43 (b) any recovery or award collected in a lawsuit after expiration of
44 such sentence where the right or cause of action accrued prior to the
45 expiration or service of such sentence; and

1 (c) earned income earned during a period in which such person was
2 not in compliance with the conditions of probation, conditional release
3 or post release supervision.

4 d. "Crime victim" means:

5 (1) the victim of a crime;

6 (2) the representative of a crime victim;

7 (3) a Good Samaritan, as provided in P.L.1963, c.140 (C.2A:62A-
8 2 et seq.);

9 (4) the Victims of Crime Compensation Board or other
10 governmental agency that has received an application for or provided
11 financial assistance or compensation to the victim.

12 e. "Earned income" means income derived from one's own labor or
13 through active participation in a business, but does not include income
14 from dividends or investments.

15 f. "Board" means the Victims of Crime Compensation Board
16 established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3).¹

17
18 ¹3. a. Every person, firm, corporation, partnership, association or
19 other legal entity, or representative of such person, firm, corporation,
20 partnership, association or entity, which knowingly contracts for, pays,
21 or agrees to pay: (1) any profits from a crime to a person charged with
22 or convicted of that crime, or to the representative of such person, or
23 (2) any funds of a convicted person where such conviction is for a
24 crime and the value, combined value or aggregate value of the
25 payment or payments of such funds exceeds or will exceed \$10,000
26 shall give written notice to the board of the payment or obligation to
27 pay as soon as practicable after discovering that the payment or
28 intended payment constitutes profits from a crime or funds of a
29 convicted person.

30 b. Notwithstanding subsection a. of this section, whenever the
31 payment or obligation to pay involves funds of a convicted person that
32 a superintendent of a correctional facility receives or will receive on
33 behalf on an inmate or prisoner serving a sentence with the
34 Department of Corrections and deposits or will deposit in an inmate
35 or prisoner account to the credit of the inmate or prisoner and the
36 value, combined value or aggregate value of such funds exceeds or
37 will exceed \$10,000, the superintendent shall also give written notice
38 to the board. Further, whenever the State makes payment or has an
39 obligation to pay funds of a convicted person and the value, combined
40 value or aggregate value of such funds exceeds or will exceed
41 \$10,000, the State shall also give written notice to the board. In all
42 other instances where the payment or obligation to pay involves funds
43 of a convicted person and the value, combined value or aggregate
44 value of such funds exceeds or will exceed \$10,000, the convicted
45 person who receives or will receive such funds, or the representative
46 of such person, shall give written notice to the board.

1 c. The board, upon receipt of notice of a contract, an agreement to
2 pay or payment of profits from a crime or funds of a convicted person
3 pursuant to subsections a. or b. of this section, or upon receipt of
4 notice of funds of a convicted person from the superintendent where
5 the inmate or prisoner is confined, shall notify all known crime victims
6 of the convicted person of the existence of such profits or funds at
7 their last known address.¹

8
9 ¹4. Notwithstanding any other law to the contrary, any crime
10 victim shall have the right to bring a civil action in a court of
11 competent jurisdiction to recover money damages from a person
12 convicted of a crime of which the crime victim is a victim, or the
13 representative of that convicted person, within three years of the
14 discovery of any profits from a crime or funds of a convicted person,
15 as those terms are defined in this act. Notwithstanding any other
16 provision of law to the contrary, a judgment obtained pursuant to this
17 section shall not be subject to execution or enforcement against the
18 first \$1,000 dollars deposited in an inmate account to the credit of the
19 inmate or in a prisoner account to the credit of the prisoner. In
20 addition, where the civil action involves funds of a convicted person
21 and such funds were recovered by the convicted person pursuant to a
22 judgment obtained in a civil action, a judgment obtained pursuant to
23 this section may not be subject to execution or enforcement against a
24 portion thereof. If an action is filed pursuant to this section after the
25 expiration of all other applicable statutes of limitation, any other crime
26 victims must file any action for damages as a result of the crime within
27 three years of the actual discovery of such profits or funds, or within
28 three years of actual notice received from or notice published by the
29 board of such discovery, whichever is later.¹

30
31 ¹5. Upon filing an action pursuant to section 4 of this act, the
32 crime victim shall give notice to the board of the filing by delivering
33 a copy of the summons and complaint to the board. The crime victim
34 may also give such notice to the board prior to filing the action so as
35 to allow the board to apply for any appropriate provisional remedies
36 which are otherwise authorized to be invoked prior to the
37 commencement of an action.¹

38
39 ¹6. Upon receipt of a copy of a summons and complaint, or upon
40 receipt of notice from the crime victim prior to filing the action as
41 provided in section 5 of this act, the board shall immediately take such
42 actions as are necessary to:

43 a. notify all other known crime victims of the alleged existence of
44 profits from a crime or funds of a convicted person by certified mail,
45 return receipt requested, where the victims' names and addresses are
46 known by the board;

1 b. publish, at least once every six months for three years from the
2 date it is initially notified by a victim, pursuant to section 5 of this act,
3 a legal notice in newspapers of general circulation in the county
4 wherein the crime was committed and in counties contiguous to such
5 county advising any crime victims of the existence of profits from a
6 crime or funds of a convicted person. The board may, in its discretion,
7 provide for such additional notice as it deems necessary;

8 c. avoid the wasting of the assets identified in the complaint as the
9 newly discovered profits from a crime or as funds of a convicted
10 person.¹

11
12 ^{17.} The board, acting on behalf of the plaintiff and all other victims,
13 shall have the right to apply for any and all provisional remedies that
14 are also otherwise available to the plaintiff.

15 a. The provisional remedies of attachment, injunction, receivership
16 and notice of pendency available to the plaintiff under the civil practice
17 law and rules, shall also be available to the board in all actions under
18 this section.

19 b. On a motion for a provisional remedy, the moving party shall
20 state whether any other provisional remedy has previously been sought
21 in the same action against the same defendant. The court may require
22 the moving party to elect between those remedies to which it would
23 otherwise be entitled.¹

24
25 ^{18.} a. Whenever it appears that a person or entity has knowingly
26 and willfully failed to give notice in violation of subsection a. of
27 section 3 of this act, the board shall be authorized to serve a notice of
28 hearing upon the person or entity by personal service or by registered
29 or certified mail. The notice shall contain the time, place and purpose
30 of the hearing. In addition, the notice shall be accompanied by a
31 petition alleging facts of an evidentiary character that support or tend
32 to support that the person or entity, who shall be named therein as a
33 respondent, knowingly and willfully failed to give the notice required
34 in subsection a. of section 3 of this act. Service of the notice and
35 petition shall take place at least 15 days prior to the date of the
36 hearing.

37 b. The chairperson of the board, or any board member designated
38 by the chairperson, shall preside over the hearing. The presiding
39 member shall administer oaths and may issue subpoenas. The presiding
40 member shall not be bound by the rules of evidence or civil procedure,
41 but the presiding member's determination shall be based on a
42 preponderance of the evidence. At the hearing, the burden of proof
43 shall be on the board, which shall be represented by the counsel to the
44 board or another person designated by the board. The board shall
45 produce witnesses and present evidence in support of the alleged
46 violation, which may include relevant hearsay evidence. The

1 respondent, who may appear personally at the hearing, shall have the
2 right of counsel and may cross-examine witnesses and produce
3 evidence and witnesses in his behalf, which may include relevant
4 hearsay evidence. The issue of whether the person who received an
5 alleged payment or obligation to pay committed the underlying crime
6 shall not be relitigated at the hearing. Where the alleged violation is
7 the failure to give notice of a payment amount involving two or more
8 payments the combined value or aggregate value of which exceeds
9 \$10,000, no violation shall be found unless it is shown that such
10 payments were intentionally structured to conceal their character as
11 funds of a convicted person. At the conclusion of the hearing, if the
12 presiding member is not satisfied that there is a preponderance of
13 evidence in support of a violation, the member shall dismiss the
14 petition. If the presiding member is satisfied that there is a
15 preponderance of the evidence that the respondent committed one or
16 more violations, the member shall so find. Upon such a finding, the
17 presiding member shall prepare a written statement, to be made
18 available to the respondent and respondent's counsel, indicating the
19 evidence relied on and the reasons for finding the violation. The board
20 shall adopt, promulgate, amend and repeal administrative rules and
21 regulations governing the procedures to be followed with respect to
22 hearings, including rules and regulations for the administrative appeal
23 of a decision made pursuant to this paragraph, provided such rules and
24 regulations are consistent with the provisions of this section.

25 c. Whenever it is found that a respondent knowingly and willfully
26 failed to give the required notice, the board shall impose an assessment
27 of up to the amount of the payment or obligation to pay and a civil
28 penalty of up to \$1,000 or ten percent of the payment or obligation to
29 pay, whichever is greater. If a respondent fails to pay the assessment
30 and civil penalty imposed, the assessment and civil penalty may be
31 recovered from the respondent by an action brought by the Attorney
32 General, upon the request of the board, in any court of competent
33 jurisdiction. The board shall deposit the assessment in an escrow
34 account pending the expiration of the three year statute of limitations
35 authorized by section 4 of this act to preserve such funds to satisfy a
36 civil judgment in favor of a person who is a victim of a crime
37 committed by the convicted person to whom such failure to give notice
38 relates. The board shall pay the civil penalty to the State Treasurer
39 who shall deposit the money in the State treasury. The board shall
40 then notify any crime victim or crime victims, who may have a claim
41 against the convicted person, of the existence of such moneys. Such
42 notice shall instruct such person or persons that they may have a right
43 to commence a civil action against the convicted person, as well as any
44 other information deemed necessary by the board. Upon a crime
45 victim's presentation to the board of a civil judgment for damages
46 incurred as a result of the crime, the board shall satisfy up to 100

1 percent of that judgment, including costs and disbursements as taxed
2 by the clerk of the court, with the escrowed fund, but in no event shall
3 the amount of all judgments, costs and disbursements satisfied from
4 such escrowed funds exceed the amount in escrow. If more than one
5 such crime victim indicates to the board that they intend to commence
6 or have commenced a civil action against the convicted person, the
7 board shall delay satisfying any judgment, costs and disbursements
8 until the claims of all such crime victims are reduced to judgment. If
9 the aggregate of all judgments, costs and disbursement obtained
10 exceeds the amount of escrowed funds, the amount used to partially
11 satisfy each judgment shall be reduced to a pro rata share.

12 After expiration of the three year statute of limitations period
13 established in section 4 of this act, the board shall review all judgments
14 that have been satisfied from such escrowed funds. In the event no
15 claim was filed or judgment obtained prior to the expiration of the
16 three year statute of limitations, the board shall return the escrowed
17 amount to the respondent. In the event a claim or claims are pending
18 at the expiration of the statute of limitations, such funds shall remain
19 escrowed until the final determination of all such claims to allow the
20 board to satisfy any judgment which may be obtained by the crime
21 victim. Upon the final determination of all such claims and the
22 satisfaction of up to 100 percent of such claims by the board, the
23 board shall be authorized to impose an additional civil penalty of up to
24 \$1,000 or ten percent of the payment or obligation to pay, whichever
25 is greater. Prior to imposing any such penalty, the board shall serve a
26 notice upon the respondent by personal service or by registered or
27 certified mail of the intent of the board to impose such penalty 30 days
28 after the date of the notice and of the opportunity to submit
29 documentation concerning the board's determination. After imposing
30 and deducting any such additional civil penalty, the board shall
31 distribute 50 percent of the remaining escrowed funds to the State
32 Treasurer, who shall deposit the money in the General Fund for
33 general State purposes. The other 50 percent of the remaining
34 escrowed funds shall be distributed to the board and may be used for
35 purposes the board deems appropriate, including, but not limited to,
36 awarding scholarships pursuant to P.L.2000, c.163 (C.18A:71B-53 et
37 seq.), the Tony Pompelio Commemorative Scholarship Fund Act.

38 d. Notwithstanding any other provision of law to the contrary, an
39 alleged failure by a convicted person to give notice under this act may
40 not result in proceedings for an alleged violation of the conditions of
41 probation, conditional release or post release supervision unless: one
42 or more claims were made by a crime victim against the convicted
43 person pursuant to this section, and the crime victims board imposes
44 an assessment or penalty upon the convicted person pursuant to this
45 section, and the convicted person fails to pay the total amount of the
46 assessment or penalty within sixty days of the imposition of such

1 assessment or penalty.

2 e. Records maintained by the board and proceedings by the board
3 or a board member based thereon regarding a claim submitted by a
4 victim or a claimant shall be deemed confidential.¹

5
6 ¹9. a. A crime victim shall have a cause of action against any
7 person who offers for sale or purports to offer for sale, any
8 memorabilia or other property or item of the defendant, the value of
9 which is enhanced by the notoriety gained from the commission of the
10 crime.

11 b. Upon proof, by a preponderance of the evidence, of a person's
12 violation of this section and of resulting damages, the person shall be
13 liable as follows:

14 (1) To the person or persons injured, for an award in the amount
15 of damages incurred as a result of the sale or purported sale of
16 defendant's property, including damages for any emotional distress
17 suffered as a result of the sale, such punitive damages as may be
18 assessed, and any reasonable attorney's fees and costs of suit incurred;
19 and

20 (2) Such injunctive relief as the court may deem necessary to avoid
21 the defendant's continued violation.¹

22
23 ¹10. If any provision of this act or the application thereof to any
24 person or circumstance is held invalid, the invalidity shall not affect
25 other provisions or applications of the sections which can be given
26 effect without the invalid provision or application, and to this end the
27 provisions of this act are severable.¹

28
29 ¹11. P.L.1983, c.33 (C.52:4B-28 et seq.) is repealed.¹

30
31 ¹[3.] 12.¹ This act shall take effect immediately.